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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,804	12/21/2000	Robert Curley	O-226	6420
51444 7590 07/30/2010 Kraguljac & Kalnay, LLC - Oracle 4700 Rockside Road Summit One, Suite 510 Independence, OH 44131				
EXAMINER				
NGUYEN, THANH T				
ART UNIT		PAPER NUMBER		
2444				
NOTIFICATION DATE		DELIVERY MODE		
07/30/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mary@kkpatent.com
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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/740,804

Applicant(s)

CURLEY ET AL.

Examiner

TAMMY THANH NGUYEN

Art Unit

2444

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☒ Other: See Continuation Sheet.

/TAMMY THANH NGUYEN/
Primary Examiner, Art Unit 2444

Continuation of 13. Other: Applicants' amendment changes the scope of the claims by adding limitations such as "...calculating a time from when a SYN packet is sent by the node to a server until a time the server replies with a SYN acknowledgment packet, web server processing time by calculating a time from when the node sends an HTTP request until a time the server replies with an initial HTTP reply, and remaining content time by calculating a time after the server replies with the initial HTTP reply until a time when the node receives a final HTTP reply from the server.." See claims 1, 15, 20, and 29. Therefore, further consideration and/or search is required.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: NGUYEN, Thanh T.
Robert Curley, <i>et al.</i>)	
)	
Serial No.: 09/740,804)	Art Unit: 2444
)	
Filed: 12/21/2000)	Confirmation No.: 6420
)	
For: <i>Methods of Determining</i>)	
<i>Communications Protocol Latency</i>)	
(as amended))	
)	
Notification Date of Final Office Action)	Attorney Docket No.: O226
May 18, 2010)	

RESPONSE AFTER FINAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Electronic Transmission	
I hereby certify that this Response after Final is being transmitted to the US Patent and Trademark Office (USPTO) via the USPTO's Electronic File System (EFS-Web) on this <u>day of 22 July 2010</u> .	
By: _____	_____
Doreen Day	

Dear Madam:

Responsive to the Final Office Action of **May 18, 2010**, Applicant respectfully requests reexamination and reconsideration as set forth herein: